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12 Attorneys for Plaintiffs PINKBERRY INC. and
13 PINKBERRY FRANCHISING COMPANY

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 PINKBERRY, INC., a California
17 corporation, and PINKBERRY
18 FRANCHISING COMPANY, a
19 California corporation,

20 Plaintiffs,

21 v.

22 KIWIBERRI, a business entity form
23 unknown; and JOHN BAE, an
24 individual,

25 Defendants.

CASE NO. CV 06-7265 PA (JWJx)

Assigned Judge: Hon. Percy Anderson

[PROPOSED]

**FINAL JUDGMENT AND
PERMANENT INJUNCTION
UPON CONSENT OF THE
PARTIES**

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1 WHEREAS, Plaintiffs Pinkberry, Inc. and Pinkberry Franchising Company
2 (“Plaintiffs”) use the word “Pinkberry” as a trademark or service mark in
3 conjunction with the sale or distribution of frozen yogurt;

4 WHEREAS, on November 14, 2006, Plaintiffs commenced the above-
5 captioned action (“Action”) against Defendants ME & AC, Inc. dba Kiwiberri and
6 John Bae (“Defendants”) alleging claims of trade dress infringement, trademark
7 infringement, false designation of origin, unfair competition, and dilution under
8 State and Federal law, which claims are based on, among other things, the use by
9 Defendants of the word “Kiwiberri” as a trademark or service mark in connection
10 with the sale or distribution of frozen yogurt;

11 WHEREAS, Plaintiffs and Defendants have reached a full and final
12 settlement of the Action, which settlement was memorialized in that certain Deal
13 Point Memo dated October 6, 2007 (the “Agreement”);

14 WHEREAS, the Agreement provides, in pertinent part, that Defendants
15 consent to the entry of a permanent injunction enjoining their use of the word
16 “Kiwiberri” as a trademark or service mark in connection with the sale or
17 distribution of frozen yogurt in the event Defendants or any of ME & AC, Inc.’s
18 licensees fail or refuse to cease using the word “Kiwiberri” as a trademark or
19 service mark in conjunction with the sale or distribution of frozen yogurt by a
20 certain date as provided in the Agreement;

21 WHEREAS, the certain date provided in the Agreement is March 22, 2008;

22 WHEREAS, by now submitting this consent judgment to the Court Plaintiffs
23 assert that Defendants or a licensee of ME & AC, Inc. have failed or refused to
24 cease using the word “Kiwiberri” as a trademark or service mark in conjunction
25 with the sale or distribution of frozen yogurt as provided in the Agreement:

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1 NOW THEREFORE it is,

2 **ORDERED, ADJUDGED AND DECREED** that:

3 1. this Court has jurisdiction over the subject matter of this Action and
4 over the parties hereto;

5 2. Defendant ME & AC, Inc., and its officers, agents, servants,
6 employees, and all other persons in active concert or participation with them, be
7 and hereby are permanently restrained and enjoined from using the word
8 "Kiwiberri" as a trademark or service mark in conjunction with the sale or
9 distribution of yogurt products;

10 3. there shall be no award of damages, accounting of profits, or other
11 monetary relief;

12 4. each party shall bear his, her, or its own costs, expenses, and attorneys'
13 fees, except as provided in the Court's Order dated February 11, 2008 concerning
14 Plaintiffs' Motion for Recovery of Attorneys' Fees; and

15 5. this judgment shall not constitute, nor shall it be construed as, an
16 admission by any of the parties of the truth or validity of any of the claims or
17 liabilities asserted in this action, or as an admission of any liability or responsibility
18 therefore.

19 IT IS SO ORDERED.

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21 Dated: May 28, 2008

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23 _____
24 PERCY ANDERSON
25 UNITED STATES DISTRICT JUDGE
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1 Presented by:

2 **RUSS AUGUST & KABAT**

3 Marc A. Fenster
4 David R. Gabor
5 Irene Y. Lee

6 By: Marc A. Fenster

7 Marc A. Fenster
8 Attorneys for Plaintiffs PINKBERRY,
9 INC. and PINKBERRY FRANCHISING
10 COMPANY

11 **CONSENTS**

12 The undersigned parties to this action consent to the entry of this Final
13 Judgment and Permanent Injunction upon Consent:

14 **PINKBERRY, INC.**

15 By: Ron Graves

16 Name: Ron Graves

17 Title: President

18 Date: _____

19 **PINKBERRY FRANCHISING
20 COMPANY**

21 By: Ron Graves

22 Name: Ron Graves

23 Title: President

24 Date: _____

25 **ME & AC, Inc., dba KIWIBERRI**

26 By: Edward Mandos

27 Name: Edward Mandos

28 Title: President

Date: 3/3/08

JOHN BAE

By: John Bae

Name: John Bae

Date: 3/3/08